

petition with this Court, which essentially challenged the DLGF's approval and certification of the Cordry Sweetwater Conservancy District's (CSCD) budgets and tax levies for the 2007 and 2008 tax years.¹ The Klosinskis asserted that the CSCD's levies were illegal as a matter of law because the taxes were not used to accomplish the CSCD's stated purposes. (See Resp't Br. Ex. 1 (hereinafter, "Ex. 1") at 5-6 ¶ 3, 8-10 ¶¶ 5, 7.) (See *a/so* Hr'g Tr. at 23-25.) As a result, the Klosinskis claimed that the DLGF's approval and certification of the CSCD's levies were improper because it legitimized the CSCD's collection of illegal taxes.

On October 1, 2009, the DLGF filed a motion to dismiss the Klosinskis' 2008 tax year claim and a motion for judgment on the pleadings as to the Klosinskis' 2007 tax year claim. The Klosinskis filed a response thereto on October 6, 2009. The Court held a hearing on the motions on November 20, 2009. Additional facts will be supplied if necessary.

Motion to Dismiss the 2008 Claim²

The DLGF has moved to dismiss the Klosinskis' 2008 tax year claim on the basis that the Court lacks subject matter jurisdiction: the Klosinskis did not exhaust the

¹ A conservancy district is a special taxing district created (by court order) for local public improvement. See *In re Petition for Establishment of Millpond Conservancy Dist.*, 891 N.E.2d 54, 55 (Ind. Ct. App. 2008) (citing *Martin v. Ben Davis Conservancy Dist.*, 153 N.E.2d 125, 135 (Ind. 1958)). See *also* IND. CODE ANN. §§ 14-33-1-1 to -2-29 (West 2009). The CSCD was established by order of the Brown County Circuit Court on June 27, 1959, for the purposes of: 1) providing water supply, including treatment and distribution, for domestic, industrial, and public use; 2) providing for the collection, treatment, and disposal of sewage and other liquid wastes; and 3) developing forests, wildlife areas, parks, and recreational facilities when feasible in connection with beneficial water management. (See Resp't Br. Ex. 1 (hereinafter, "Ex. 1") at 107-14.)

² The Court has addressed the DLGF's motions in the order in which they were presented to the Court.

appropriate administrative remedies before filing their petition with this Court and therefore they have no final determination from any administrative agency from which to appeal. (See Resp't Br. at 9-11.) The DLGF claims that the Klosinskis' challenge as to the propriety of the CSCD's 2008 budget/tax levy should have been presented in accordance with Indiana Code §§ 14-33-9-1 and 6-1.1-17 et seq., statutes providing for the establishment and review of the CSCD's budget. (See Resp't Br. at 10-11.)

In response, the Klosinskis explain that their 2008 tax bill served as their first and only notice that the DLGF approved and certified the CSCD's 2008 budget/tax levy. (See Pet'rs Reply Br. Opposing [Resp't] Mot. J. & Mot. Dismiss (hereinafter, "Pet'rs Br.") at 3-4 ¶ 1(C).) Thus, the Klosinskis maintain that their claim is properly before the Court because the DLGF's approval and certification of the CSCD's 2008 budget was a final determination, given that it provided the final authorization for the collection of the CSCD tax. (See Pet'rs Br. at 3-4 ¶ 1(B)-(C); Hr'g Tr. at 17-19.) The Court, however, disagrees.

Subject matter jurisdiction is the power of a court to hear and determine a particular class of cases. *Goldstein v. Indiana Dep't of Local Gov't Fin.*, 876 N.E.2d 391, 393 (Ind. Tax Ct. 2007) (citation omitted). Subject matter jurisdiction is not conferred upon a court by consent or agreement of the parties to the litigation; rather, it can only be conferred upon a court by the Indiana Constitution or by statute. *Id.* (citation omitted). If a court does not have subject matter jurisdiction, any judgment that it renders is void. *Id.* (citation omitted).

A final determination is an order that determines the rights of, or imposes obligations on, the parties as a consummation of the administrative process. *BP Prods.*

N. Am., Inc. v. Dep't of Local Gov't Fin., 774 N.E.2d 122, 126 (Ind. Tax Ct. 2002) (citations omitted), *review denied*. A DLGF final determination subject to direct review in this Court generally results from an adjudicatory administrative proceeding. See, e.g., IND. CODE ANN. § 6-1.1-14-8 (West 2009) (review of DLGF final determinations regarding equalization orders); IND. CODE ANN. § 6-1.1-18.5-8 (West 2009) (review of DLGF final determinations regarding a civil taxing unit's petition to incur bond indebtedness or execute certain leases).

While the Klosinskis contend that they are challenging the propriety of the DLGF's approval and certification of the CSCD's 2008 budget/tax levy, they are actually attacking the propriety of the CSCD's 2008 budgetary appropriations. As such, the Klosinskis were required to pursue their claim in accordance with the provisions of Indiana Code §§ 14-33-9-1 and 6-1.1-17 et seq. See IND. CODE ANN. § 14-33-9-1(a) (West 2008) (providing that a conservancy district's budget must be prepared in accordance with Indiana Code § 6-1.1-17 et seq.). These statutes would have funneled the Klosinskis' claim into an adjudicatory proceeding, which would have then produced a DLGF final determination subject to this Court's review. See, e.g., IND. CODE ANN. §§ 6-1.1-17-3, -5, -13, -16 (West 2008) (amended 2009) (allowing taxpayers to file their objections as to a conservancy district's budget with its board of directors, the county

board of tax adjustment, the DLGF, and this Court).³ Consequently, the Court concludes that it does not have subject matter jurisdiction over the Klosinskis' 2008 tax year claim.

Motion for Judgment on the Pleadings as to the 2007 Claim

Indiana Trial Rule 12(C) provides that “[a]fter the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings.” Ind. Trial Rule 12(C). “[A] motion for judgment on the pleadings should be granted only when: 1) the pleadings present no material issues of fact, and 2) the facts as shown by the pleadings entitle one party to judgment.” *Rhoades v. Indiana Dep’t of State Revenue*, 774 N.E.2d 1044, 1046 (Ind. Tax Ct. 2002) (citation omitted). To that end, the movant admits, for purposes of the motion, all facts well pleaded and the untruth of its own allegations which have been denied. *Id.* Furthermore, all reasonable inferences and inferences are drawn in favor of the non-moving party. *Id.*

The DLGF asserts that it is entitled to judgment on the pleadings with respect to the Klosinskis' 2007 tax year claim because again, the Klosinskis did not exhaust their applicable administrative remedies. The Court agrees because the Klosinskis presented their challenge to the CSCD's budget/tax levy for the 2007 tax year to the

³ In turn, the Klosinskis assert that the procedures provided under Indiana Code § 6-1.1-17 et seq. are inadequate because they fail to “provide an appeal remedy for the individual taxpayer.” (See Hr’g Tr. at 25.) See also IND. CODE ANN. § 6-1.1-17-3, -5, -13 (West 2008) (amended 2009). To the extent the Klosinskis believe these to be impossible or burdensome requirements, the Court disagrees. See, e.g., *Lantern Hills Conservancy Dist. v. Indiana State Bd. of Tax Comm’rs*, 516 N.E.2d 119 (Ind. Tax 1987) (where ten or more taxpayers objected to a conservancy district's decision to issue bonds).

DLGF by filing two Petitions for Correction of Error (Form 133s).⁴ (See, e.g., Ex. 1 at 27-29 (DLGF's order which dismissed the Klosinskis' Form 133s (footnote added)).) As previously explained, however, the Klosinskis' challenge to the CSCD's budget should have been funneled through the adjudicatory channels provided under Indiana Code §§ 14-33-9-1 and 6-1.1-17 et seq. See *supra* pp. 4-5. Accordingly, the DLGF is entitled to judgment on the pleadings: the Klosinskis use of Form 133s to challenge the CSCD's 2007 budget/tax levy was inappropriate.

CONCLUSION

For the foregoing reasons, the DLGF's motion to dismiss the Klosinskis' 2008 tax year claim and its motion for judgment on the pleadings as to the Klosinskis' 2007 tax year claim are GRANTED.

SO ORDERED this 17th day of December, 2009.

Thomas G. Fisher, Judge
Indiana Tax Court

⁴ The Klosinskis initially filed their Form 133s with the Brown County Auditor on December 1, 2008. The Brown County Auditor and the Brown County Assessor disapproved the Form 133s on December 22, 2008. The Klosinskis then filed identical Form 133s with the DLGF on January 12, 2009. (See Ex. 1 at 27 ¶¶ 1-2.)

DISTRIBUTION:

Michael H. & Phyllis J. Klosinski
7974 Elm Drive
Nineveh, IN 46164

Gregory F. Zoeller
Attorney General of Indiana
By: John D. Snethen, Deputy Attorney General
Indiana Government Center South, Fifth Floor
302 West Washington Street
Indianapolis, IN 46204-2770